

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail Express & Priority Mail
Priority Mail Express & Priority Mail Contract 20

Docket No. MC2015-78

Competitive Product Prices
Priority Mail Express & Priority Mail Contract 20
(MC2015-78)
Negotiated Service Agreement

Docket No. CP2015-123

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE
REQUEST TO ADD PRIORITY MAIL EXPRESS & PRIORITY MAIL
CONTRACT 20 TO THE COMPETITIVE PRODUCT LIST

(August 17, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2648.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Express & Priority Mail Contract 20 to the competitive product list.²

The Postal Service's Request includes a Statement of Supporting Justification (Statement), a certification of compliance with 39 U.S.C. § 3633(a), a public (redacted) version of Governor's Decision No. 11-6 and related analysis, a public version of Priority Mail Express & Priority Mail shipping services Contract 20, and proposed changes to the Mail Classification Schedule (MCS) competitive product list with the additions underlined. The Postal Service also filed under seal an unredacted version of

¹ Order No. 2648, Notice and Order Concerning the Addition of Priority Mail Express & Priority Mail Contract 20 to the Competitive Product List, August 10, 2015.

² Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 20 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, August 7, 2015 (Request).

Governor's Decision No. 11-6, Contract 20, and a supporting financial model estimating the contract value during the first year.

The Postal Service states that Priority Mail Express & Priority Mail Contract 20 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service also maintains that the prices and classification underlying Contract 20 are authorized by Governors' Decision No. 11-6.³ The Postal Service further asserts that the Statement provides support for adding Contract 20 to the competitive product list and the compliance of the Contract 20 with 39 U.S.C. § 3633(a). Request at 2; *Id.*, Attachment D.

The effective date of Contract 20 is one business day following the day on which the Commission issues all necessary regulatory approvals. *Id.*, Attachment B at 5 (Article II). Contract 20 is scheduled to expire 3 years from the effective date unless either party terminates the contract on 30 days' prior written notification, or other specific events. *Id.*, (Article III).

COMMENTS

The Public Representative has reviewed the Postal Service's Request, Priority Mail Express & Priority Mail Contract 20, the Statement of Supporting Justification, and financial model filed under seal with the Request. Based upon that review, the Public Representative concludes that Contract 20 should be classified as a competitive product and added to the competitive product list. In addition, Contract 20 is projected to generate sufficient revenues to cover costs in its first year and thereby satisfy 39 U.S.C. § 3633(a).

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Contract 20 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above

³ Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors' Decision No. 11-6).

costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such powers are categorized as market dominant while all others are categorized as competitive.

The Postal Service Statement makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D, at 2. Based upon these assertions, the Public Representative concludes that the Postal Service’s Request to add Priority Mail Express & Priority Mail Contract 20 to the competitive product is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model, it appears the Postal Service’s negotiated prices for Contract 20 should generate sufficient revenues to cover costs during its first year and therefore meet the requirements of 39 U.S.C. § 3633(a).

As indicated above, Contract 20 is expected to remain in effect for a period of three years. Contract 20 includes a mechanism for the adjustment of contract prices during this 3-year period. The adjustments to contract prices are linked to the prices of general applicability for Priority Mail Express and Priority Mail Commercial Plus. Increases in prices of general applicability for Commercial Plus will result in an increase in contract prices. More importantly, however, if the Postal Service does not seek a price adjustment, or proposes a decrease in generally applicable prices for Commercial Plus, there will be no change in contract prices or contract prices will decrease. Under such circumstances, if generally applicable prices for Commercial Plus rise at a slower pace than the increase in contract costs, or such prices decrease during the term of the contract, the cost coverage for Contract 20 would decline.

This concern is mitigated somewhat by the fact that the Postal Service must file revenue and cost data for Contract 20 in its Annual Compliance Report. This data will permit the Commission to review the financial performance of Contract 20 in its Annual Compliance Determination (ACD) report for compliance with 39 U.S.C. § 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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